REMARKS

Claims 1-41 are currently pending in the present application. Claims 1, 15, 24, 29, and 30 have been amended. Support for the amendments for claims 1, 15, 29 and 30 can be found, for example, in Figure 12, and in the specification at, for example, paragraph 67. Claim 24 has been amended to correct a typographical error.

I. *Rejection Under 35 U.S.C. § 112, Second Paragraph*

The Examiner has rejected claim 1 under 35 U.S.C. § 112, second paragraph, as lacking antecedent basis for "the lumen." Additionally, the Examiner has rejected claim 29 as lacking antecedent basis for "said metal reinforcement". Claims 1 and 29 have been amended to recite proper antecedent basis. Applicants respectfully request that the rejections under 35 U.S.C. § 112, second paragraph be withdrawn.

II. *Rejection Under 35 U.S.C. § 102(b): Kan*

The Examiner has rejected claims 1, 2, 9-11, 15, 19, 23, 26, 27, 30-33 and 36 under 35 U.S.C. § 102(b) as anticipated by Kan et al. (U.S. Patent No. 6,497,651, "Kan"). Applicants respectfully traverse the rejection.

A. Kan does not describe a tissue spreading dissector mechanism that extends radially outwardly or beyond the circumference of the housing

Claim 1 has been amended to more clearly describe the operative configuration of the tissue spreading dissector mechanism of the device. Claim 1 recites a dissector device comprising an elongated housing that is operative to receive a viewing device within its lumen. The device also comprises a tissue spreading dissector mechanism transitional between a first neutral position and an operative configuration. In the operative configuration, the tissue spreading mechanism extends outwardly beyond the circumference defined by the distal end of the housing. See, for example, paragraph 67 and Figure 12 of the present application (indicating outward extending motion by arrows at "D").

Similarly, Claim 15 of the present application recites a dissector device having flap members that transition between a closed position and an operative configuration. In the operative configuration, the flap members extend radially outward about the distal end of the housing. The fully extended position is shown, for example in Figure 2, which shows tissue spreaders or flap members that radially spread out in the direction indicated by "A" in the figure. See also paragraph 51 of the specification. Additionally, Claim 29 recites a dissector device having tissue spreaders that transition between a closed position and an operative configuration wherein the tissue spreaders extend radially outward about the distal end of the housing.

The claimed invention, having tissue spreaders or flap members that extend beyond the circumference defined by the distal end of the housing or radially outward about the distal end of the housing when in an operative configuration, is designed to facilitate tissue spreading and dissection under direct viewing. The claimed invention further permits direct vision while the device is transitioning between a neutral/closed and operative configurations.

Kan does not disclose all elements of the claims. Kan does not disclose a tissue spreading mechanism that extends beyond the circumference defined by the distal end of the housing, as recited in claim 1, or flap members or tissue spreaders that extend radially outward about the distal end of the housing, as recited in claims 15 and 30, respectively. Kan discloses scoop-like members that project only as far as the circumference of the hollow tube, and not beyond it. Applicants respectfully submit, therefore, that Kan does not anticipate the present claims, and respectfully request that the rejection under 35 U.S.C. § 102(b) be withdrawn.

III. *Rejections Under 35 U.S.C. § 103*

The Examiner has rejected the remaining claims as unpatentable under 35 U.S.C. §103 over Kan in view of various additional references. Specifically, the Examiner has rejected claims 3-5 and 37 as unpatentable over Kan in view of Privitera et al. (U.S. 5,569,291); claims 7, 21, 22, 34, 35, and 39 as unpatentable over Kan in view of Wilk (U.S. 5,511,564); claims 6, 14, 40, and 41 as unpatentable over Kan in view of Yoon (U.S. 5,843,017); claims 8, 20, and 38 as unpatentable over Kan in view of Ko (U.S. 5,354,302); claims 12 and 18 as unpatentable over

Kan in view of Brown et al. (U.S. 5,201,752); claims 13 and 28 as unpatentable over Kan in view of Erb et al. (U.S. 6,436,119); claims 16, 17, and 29 as unpatentable over Kan in view of Yoon and further in view of Makower et al. (U.S. 5,683,349); and claims 24 and 25 as unpatentable over Kan in view of Pena (U.S. 5,178,133). Applicants respectfully traverse each of the rejections.

As discussed above, the claims of the present invention each recite a device having an operative configuration wherein a tissue spreading mechanism extends outwardly beyond the circumference defined by the distal end of the housing or extends radially outward about the distal end of the housing. As discussed in the present application, an advantage provided by the invention is the ability of the device to selectively dissect through succeeding layers of tissue as the device is made to penetrate toward a target tissue. See, e.g., specification, paragraphs 52-53, 63, 67. This function is provided by transitioning the device between a neutral or closed configuration and a radially outward extending operative configuration. A combined dissecting and spreading action facilitates layer by layer penetration that has improved safety over prior devices.

As discussed above, Kan does not teach or suggest all elements of the present claims. Furthermore, none of the references correct the deficiencies of Kan. For example, the Examiner has not provided any motivation to modify the device of Kan to provide an operative configuration wherein the scoop-like members extend outwardly beyond the circumference defined by the distal end of the housing, or wherein the scoop-like members extend radially outward about the distal end of the housing, as in the presently claimed invention.

The Kan device in the operative configuration creates a space in which an operating tool can access a targeted tissue area. See Kan at 2:6-9; 3:58-62. The scoop-like members of Kan do not extend beyond the outer diameter of the hollow tube from which they extend. See Kan at 3:31-34; Figure 1C. Kan does not provide any suggestion to modify the scoop-like members to extend beyond this point, as the disclosed device provides the desired function. Moreover, none of the remaining references cited by the Examiner provide any motivation to modify the device of Kan to provide the presently claimed invention. Applicants

respectfully submit that the claims are not obvious and are in condition for allowance, and request that each of the rejections under 35 U.S.C. § 103 be withdrawn.

CONCLUSION

Applicants respectfully submit that the pending claims are in condition for allowance and notice to such effect is respectfully requested. The Commissioner is hereby authorized to charge Deposit Account No. 50-0436 for any additional fees that may be due in connection with this response.

Should the Examiner have any questions or comments, or need any additional information from Applicant's attorney, he is invited to contact the undersigned at his convenience.

Respectfully submitted,

By: 

Raymond A. Miller
Reg. No. 42,891

PEPPER HAMILTON LLP
500 Grant Street
One Mellon Center, 50th Floor
Pittsburgh, PA 15219
Telephone: 412.454.5813
Facsimile: 412.281.0717
Date: February 21, 2007